

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maura Roche	Team: Squad #10	CCRB Case #: 202100288	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/12/2021 8:30 PM	Location of Incident: Flatbush Avenue Ext. and Myrtle Avenue	Precinct: 84	18 Mo. SOL 7/12/2022	EO SOL 7/12/2022	
Date/Time CV Reported Wed, 01/13/2021 6:43 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 01/13/2021 6:43 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Artem Prusayev	13776	956184	084 PCT
2. POF Justine Sallusto	10135	967682	084 PCT
3. POM Joshua Destasio	22279	962357	084 PCT
4. POM Craig Schoelermann	19383	962787	084 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Yousif Said	15758	967681	084 PCT
2. POM Pratik Patel	17408	959048	084 PCT
3. POM Juan Urgilestoral	15259	956310	084 PCT
4. POM Jeffrey Sanjose	14833	956233	084 PCT
5. POM Karlvirn Williams	04860	969429	084 PCT
6. CPT Justin Knudsen	00000	938780	088 PCT
7. POM Daniel Prendergast	01776	965425	088 PCT
8. POM Giovanni Fierro	08212	961761	088 PCT
9. POM Almand Kucevic	20305	958780	084 PCT
10. POM Adam Merino	16588	957852	084 PCT
11. POM Mario Cannariato	16441	957419	084 PCT
12. SGT Przemyslaw Jamiolkowski	4567	935054	084 PCT
13. CPT Adeel Rana	00000	935565	084 PCT
14. CPT Bailey Goon	00000	940207	078 PCT
15. SGT Tamara Pippinsgreaves	00689	942365	084 PCT
16. POM Anthony Buonomo	09259	954579	SRG 3
17. SGT Myrna Rodriguezwelch	02279	939351	PROPCLK

Officer(s)	Allegation	Investigator Recommendation
A.POM Artem Prusayev	Abuse: Police Officer Artem Prusayev drew his gun.	
B.POM Artem Prusayev	Abuse: Police Officer Artem Prusayev threatened individuals with the use of force.	

Officer(s)	Allegation	Investigator Recommendation
C.POF Justine Sallusto	Abuse: Police Officer Justine Sallusto threatened individuals with the use of force.	
D.POM Joshua Destasio	Abuse: Police Officer Joshua Destasio threatened individuals with the use of force.	
E.POM Craig Schoelermann	Abuse: Police Officer Craig Schoelermann threatened individuals with the use of force.	
F.POM Artem Prusayev	Abuse: Police Officer Artem Prusayev threatened § 87(2)(b) with the use of force.	
G.POM Artem Prusayev	Discourtesy: Police Officer Artem Prusayev acted discourteously toward individuals.	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

### Case Summary

On January 13, 2021, § 87(2)(b) filed this complaint on behalf of himself and unknown individuals with the CCRB online. That same day, § 87(2)(b) filed a duplicate complaint online (**BR 01**). On January 14, 2021, § 87(2)(b) filed a duplicate complaint online (**BR 02**). On January 18, 2021, § 87(2)(b) filed a duplicate complaint with the CCRB online (**BR 03**).

On January 12, 2021, at approximately 8:30 p.m., at the intersection of the Flatbush Avenue Extension and Myrtle Avenue in Brooklyn, PO Artem Prusayev, of the 84<sup>th</sup> Precinct (PO Prusayev has since been assigned to the 10<sup>th</sup> Precinct), drew his firearm in front of a crowd of approximately 40 people marching from the Barclay's Center toward the Manhattan Bridge to protest the killing of Andre Hill (**Allegation A: Abuse of Authority – Gun Drawn, § 87(2)(g)**). After a few seconds, PO Prusayev holstered his firearm and took out his pepper spray, which he pointed at the crowd (**Allegation B: Abuse of Authority – Threat of Force, § 87(2)(g)**). As soon as PO Prusayev removed his pepper spray, PO Justine Sallusto, also of the 84<sup>th</sup> Precinct, removed hers and pointed it toward the ground (**Allegation C: Abuse of Authority – Threat of Force, § 87(2)(g)**). PO Prusayev and PO Sallusto then both swung their collapsible batons open and held them in front of the crowd (**subsumed under Allegations B and C**). Additional officers, including PO Joshua Destasio and PO Craig Schoelermann, also of the 84<sup>th</sup> Precinct, arrived at the location. PO Destasio and PO Schoelermann swung open their collapsible batons and held them in front of the crowd (**Allegations D and E: Abuse of Authority – Threat of Force, § 87(2)(g)**).

PO Prusayev and PO Sallusto went back to their marked van, and, when § 87(2)(b) was filming PO Prusayev from outside, PO Prusayev opened the door quickly as if to hit her (**Allegation F: Abuse of Authority – Threat of Force, § 87(2)(g)**).

During the incident, PO Prusayev was wearing two unapproved patches on the vest of his uniform. One was a patch reading “Does not play well with others” and the other was of a plague doctor wearing an NYPD helmet reading “Police 2020 Riots” (**Allegation G: Discourtesy – Action, § 87(2)(g)**).

§ 87(4-b) § 87(2)(g)

Body-worn camera footage was obtained from PO Prusayev (**BR 04 and 05**), PO Sallusto (**BR 06 and B 07**), PO Yousef Said (**BR 08 and BR 09**), PO Pratik Patel (**BR 10 and BR 11**), PO Jeffrey Sanjose (**BR 12 and BR 13**), PO Juan Urigilestoral (**BR 14 and BR 15**), PO Karlvirn Williams (**BR 16 and BR 17**), PO Giovanni Fierro (**BR 18 and 19**), PO Daniel Predergast (**BR 20 and BR 21**), Sgt. Tamara Pippinsgreaves (**BR 22 and BR 23**), and PO Almand Kucevic (**BR 24 and BR 25**). Cell phone footage was obtained through social media (**BR 26, BR 27, BR 59, and BR 28**). The relevant portions of the video footage are discussed below. There was no additional video.

No arrests or summonses resulted from this incident.

§ 87(2)(g)

### Findings and Recommendations

#### **Allegation (A) Abuse of Authority: Police Officer Artem Prusayev drew his gun.**

It was undisputed by all parties that on January 12, 2021, at approximately 8:30 p.m., at the intersection of the Flatbush Avenue Extension and Myrtle Avenue in Brooklyn PO Prusayev drew his firearm in front of protestors.

§ 87(2)(b) consistently stated (**BR 01 and BR 30**) that she was participating in a peaceful protest consisting of approximately 30 to 50 people in honor of Andre Hill that began at the Barclays Center and was heading northbound on Flatbush Avenue toward the Manhattan Bridge. Marked police vehicles were following protestors, who were primarily on foot with a few cyclists

in the lead, as they marched. § 87(2)(b) did not observe any interactions between these police officers and the protestors.

At approximately 8:30 p.m., as the front of the group of protestors approached the intersection of the Flatbush Avenue Extension and Myrtle Avenue, § 87(2)(b) who was on the east side of the street near the front of the group, observed PO Prusayev and PO Sallusto, who were standing on the west side of the intersection, blocking westbound traffic. PO Prusayev was not wearing a facemask, and she, along with other protestors in the group yelled, at the same volume at which they had previously been using, at PO Prusayev asking why he was not wearing a facemask. § 87(2)(b) heard someone offer PO Prusayev a facemask. § 87(2)(b) did not observe anyone of the protestors make threatening statements toward PO Prusayev or PO Sallusto, rush forward toward PO Prusayev and PO Sallusto, throw any objects toward PO Prusayev and PO Sallusto, or do anything in any way threatening toward PO Prusayev and PO Sallusto.

Almost immediately, without first saying anything to the protestors, PO Prusayev drew his firearm from its holster and pointed it toward the ground while holding it with both of his hands. § 87(2)(b) could not estimate how far away she and the other protestors were from PO Prusayev when he did this. PO Prusayev's arms were crossed in front of his torso, and it appeared to § 87(2)(b) that she was trying to intimidate the crowd. PO Prusayev did not ever point the firearm at the protestors, and PO Sallusto, who was standing immediately next to PO Prusayev, did not ever remove her firearm but put her hand on top of it while it was holstered. Once PO Prusayev had drawn his firearm, the protestors started to yell more loudly at PO Prusayev, but § 87(2)(b) could not hear if he was saying anything. A few seconds later, PO Prusayev put his firearm back into its holster.

§ 87(2)(b) and § 87(2)(b) did not provide statements to the investigation.

PO Prusayev (BR 31) stated that shortly before 8:30 p.m. he was instructed to report to the intersection of the Flatbush Avenue Extension and Fulton Street with his partner and former trainee, PO Sallusto, to block westbound traffic from interacting with a group of protestors that were marching northbound on Flatbush Avenue toward the Manhattan Bridge and to prevent the protestors from going onto Fulton Street. Other officers, from his command and assigned to a protest detail, were also instructed to respond to that general vicinity for traffic control. PO Prusayev and PO Sallusto exited their vehicle and observed a group of approximately 40 protestors, most on foot and a few on bicycles, walking northbound. The protestors were moving slowly, and some were holding signs while yelling loudly, "Fuck the police," "Burn this place down," "No justice, no peace," "Pussy," "Get a job," "Quit your job," and "go home." However, PO Prusayev did not observe anything that he considered to be threatening in nature in their behavior.

Once the protestors passed the intersection of Flatbush Avenue and Fulton Street, PO Prusayev and PO Sallusto drove north to the intersection of the Flatbush Avenue Extension and Myrtle Avenue. They parked and simultaneously observed a bus starting to make a turn as the bicyclists at the front of the group of protestors approached the intersection. PO Prusayev was concerned that the bus would hit the group of protestors, so he and PO Sallusto exited to stop the bus until the group of protestors had passed.

PO Prusayev, who was not wearing a mask (see OCD spinoff case § 87(2)(b) and PO Sallusto stood in the center of the intersection by the median separating northbound and southbound traffic. PO Prusayev saw the protestors on foot approaching when he realized he was not wearing his facemask. At the same time, he heard someone from the crowd yell out that he [PO Prusayev] was mask-less. PO Prusayev looked down to retrieve a facemask from his jacket pocket, and, when he looked up, saw a Hispanic male running directly toward him followed by approximately 20 to 30 people from the crowd of protestors moving more slowly but also directly toward him. PO Prusayev heard the male, as he was approaching him, say, "I'm going to fuck you up." Other people were also saying things like, "You're a pussy!" and, "Go home!"

As the male was approaching PO Prusayev, the male had his right hand behind his back at waist level and was pointing his left hand at PO Prusayev. PO Prusayev could not see the male's

right hand, and, therefore, was not sure if he was in possession of a weapon. PO Prusayev did not observe anything on the male's body that appeared to be a bulge or resemble a weapon, but he was concerned for his safety because he could not see the male's right hand, the male was approaching him quickly, the male had yelled, "I'm going to fuck you up!" and there were no other officers besides PO Sallusto in the immediate area. PO Prusayev was also concerned because the approaching Hispanic male and larger group of protestors might push him and PO Sallusto into the moving traffic behind them or grab them and pull them into the group of protestors. PO Prusayev added that his concern was heightened in general because of the January 6, 2021, Insurrection at the U.S. Capitol during which an officer was killed.

When the male was less than an arm's distance in front of PO Prusayev, with his right hand still behind his back and his left hand holding the front of his waistband by his belt, and with the other people in the crowd approximately four feet behind the male, PO Prusayev heard the male say again, "Come fight me, pussy! I'll fuck you up!" PO Prusayev then drew his firearm. PO Prusayev decided to do this because he was not equipped with a Taser and he thought that drawing his firearm would be the quickest way to get the male and other protestors to back away from him.

PO Prusayev verbally instructed the male and the approaching protestors to back up, removed his firearm from the holster, and placed it in the "Sul" position, which he described as a technique that he learned at the firing range approximately six months prior. He was taught that in chaotic situations involving an active shooter or multiple people, in order to avoid accidentally shooting someone's back or face, officers should point their firearms downward with the muzzle toward the ground and with the nondominant hand on top of the dominant so that an officer could quickly transition into a ready position to fire should the need arise. PO Prusayev was not trained to use his firearm in the Sul position as a means to de-escalate a situation or to control a large crowd.

As soon as PO Prusayev removed his firearm from the holster and placed it in the Sul position, the male ran back into the larger crowd of protestors, which was still approximately four feet in front of him and PO Sallusto. The protestors continued to yell profanities at PO Prusayev and PO Sallusto, and, while the crowd maintained its distance, the protestors began to circle around PO Prusayev and PO Sallusto on all sides, increasing PO Prusayev's concern for his and PO Sallusto's safety. After approximately three seconds, PO Prusayev saw other officers arriving at the intersection, so he decided to re-holster his firearm.

PO Sallusto's statement (**BR 32**) was generally consistent with that of PO Prusayev with the following exceptions noted. Initial communications regarding the protest were that it was an orderly group of people. As the protestors marched northbound on Flatbush Avenue, people were yelling at officers that they should, "kill themselves," and, "quit and find new jobs." While PO Sallusto thought that the statements were threatening in nature, the statements were not directed at any specific officer, so she did not fear for her or other officers' safety.

At the intersection of the Flatbush Avenue Extension and Myrtle Avenue, approximately 40 people in the crowd of protestors noticed that PO Prusayev was not wearing a mask and started to approach her and PO Prusayev while yelling more loudly than before. PO Sallusto was concerned because there was moving traffic behind her and PO Prusayev and because she could not see the hands of all the protestors so could not be sure that they were not holding weapons. PO Sallusto did not observe any particular individuals that she suspected were in possession of weapons, nor did she observe anything that she suspected to be a weapon on any of the people in the crowd of protestors.

PO Sallusto and PO Prusayev both gave verbal instructions for the people in the crowd, who were moving at a normal walking pace, to back up, but they did not comply. Out of the corner of her eye, PO Sallusto, who was an arm's distance from PO Prusayev, saw a Hispanic male moving quickly toward PO Prusayev with one hand behind his back while yelling that he was going to "fuck him up." The male came within one to two feet of PO Prusayev when she noticed the crowd back away. At that time, still in her peripheral vision, PO Sallusto saw that PO Prusayev had taken his firearm out of its holster and was pointing it toward the ground in the Sul position. A few

seconds later, as additional officers arrived, PO Prusayev re-holstered his firearm. PO Sallusto did not draw her firearm because by the time she noticed that PO Prusayev had drawn his, the people in the crowd were already backing up and she did not perceive an immediate threat.

PO Destasio's statement (**BR 33**) was generally consistent with those of PO Prusayev and PO Sallusto with the following exceptions. PO Destasio and PO Schoelermann were also stationed at the intersection of the Flatbush Avenue Extension and Myrtle Avenue but on the opposite side of the street. PO Destasio saw approximately 50 to 100 people approaching the intersection, none of whom he recalled saying anything threatening as they started to pass. When the crowd of people was approximately 25 yards south of where he was standing, he saw people cut over to the other side of the street where PO Prusayev and PO Sallusto were standing. PO Destasio was too far to discern any individuals in the crowd and did not know why they suddenly turned. PO Destasio saw that people were walking more quickly than they had been and were also yelling more loudly general statements like, "We're going to get you!" PO Schoelermann yelled for PO Destasio, "Get the keys. Prusayev's in trouble!" indicating that PO Destasio should lock their vehicle and cross the street to assist PO Prusayev and PO Sallusto.

As PO Destasio crossed the street, he saw that the people in the crowd were advancing forward toward PO Prusayev and PO Sallusto within approximately one to two arms' length. Although PO Destasio could see where PO Prusayev and PO Sallusto were standing, because of the people in front of him, he was not able to see what they were doing with their hands or what the people in the crowd directly in front of them were doing. PO Destasio never observed PO Prusayev with his firearm drawn.

PO Schoelermann's statement (**BR 34**) was generally consistent with those of PO Prusayev, PO Sallusto, and PO Destasio with the following exceptions noted. PO Schoelermann observed a group of approximately 30 people walking northbound on Flatbush Avenue. When the crowd turned sharply toward PO Prusayev and PO Sallusto, they were yelling more loudly than before, walking more quickly, waving their hands over their heads, and pointing at PO Prusayev. PO Schoelermann was concerned that the crowd was going to push PO Prusayev and PO Sallusto into the oncoming traffic behind them, so he yelled for PO Destasio to secure their car and that they needed to go to the other side of the intersection. As he approached, PO Schoelermann heard people in the crowd yelling for PO Prusayev and PO Sallusto to "Move back!" PO Schoelermann did not ever see PO Prusayev draw his firearm.

PO Prusayev's (**BR 04** and **BR 05**) and PO Sallusto's (**BR 06** and **BR 07**) body-worn cameras capture this portion of the incident. PO Prusayev's body-worn camera footage begins with PO Destasio and PO Schoelermann driving away from the intersection while he and PO Sallusto remain on foot by the median between the north and southbound sides of the street. Beginning at 00:30 seconds, the first of the protestors begin to move through the intersection on bicycles while people on foot follow behind. Beginning at 00:49 seconds, a Hispanic male, with an average build, who appears to be shorter than PO Sallusto, who is 5'5" tall, approaches PO Prusayev with his left hand pointed at PO Prusayev and his right hand behind his back at waist level. PO Sallusto, who is within an arm's distance of PO Prusayev to his right and closer to the oncoming crowd, waves with her right hand for the Hispanic male to move away while keeping her left hand by her waist. The Hispanic male approaches until 00:54 seconds, at which point he backs away from PO Prusayev and PO Sallusto. At approximately the same time, PO Sallusto turns toward PO Prusayev and looks downward toward his waist area while people in the crowd point toward PO Prusayev's waist area and film on cell phones. There is no audio for this portion of the body-worn camera footage, but it appears that the Hispanic male is yelling at PO Prusayev and PO Sallusto.

Beginning at 2:48 minutes, PO Prusayev, who is seated inside of his van speaks with Captain Adeel Rana and tells him, "It's wasn't cuffs. They tried to grab me. I pulled my gun out."

PO Sallusto's body-worn camera footage is generally consistent with that of PO Prusayev.

Cell phone footage obtained from social media (**BR 26**) captures PO Prusayev holding his firearm pointed toward the ground with PO Sallusto standing within an arms distance of him to his

right with her hands by her waist. The person holding the camera is at a distance of approximately one quarter of the avenue. At 00:02 seconds, an individual approaches within approximately two arms' length of PO Prusayev while holding a plastic bottle containing a clear liquid and points at PO Prusayev. At 00:05 seconds, PO Prusayev puts his firearm back into the holster. No other officers are visible in the frame.

Additional cell phone footage obtained from social media (**BR 27**) captures, at 00:00 seconds, PO Prusayev with his firearm pointed to the ground and putting it back into the holster by 00:01 seconds. It is unclear from this footage how close the people in the crowd are to PO Prusayev and PO Sallusto.

A third video obtained from social media (**BR 59**), which was heavily edited, captures, between 00:00 seconds and 00:29 seconds, the Hispanic male approaching PO Prusayev and PO Sallusto, PO Sallusto waving the Hispanic male on, and PO Prusayev reaching for and drawing his firearm at approximately the same time. In this video, which captures the Hispanic male from behind, it is clear that there is nothing in either of the Hispanic male's hands. (Contact attempts were made to the individual who posted this video, to which they did not respond. As such, and original copy could not be obtained, and this modified video could not be used in the analysis of the recommended disposition.)

No TRI was completed regarding this incident (**BR 35**).

An Unusual Occurrence Report (**BR 36**), prepared by Captain Rana, documented that PO Prusayev and PO Sallusto were assigned to protect the protestors from oncoming traffic and to prevent the protestors from entering the business district. "Officer Prusayev stated that the group surrounded him while one of the protestors grabbed his arm, at which point Officer Prusayev unholstered his firearm but never pointed it at anyone and did state get back." PO Prusayev, in his CCRB interview (**BR 31**), clarified that he told Captain Rana that he thought the Hispanic male, was going to grab him and that the documentation in the report was a miscommunication. PO Prusayev also noted in the body-worn camera footage where he tells Captain Rana (**BR 04** and **BR 05**), beginning at 2:48 minutes, "It's wasn't cuffs. They tried to grab me. I pulled my gun out." PO Prusayev denied ever telling any officers that someone had grabbed his arm, only that they had tried to.

In his memo book (**BR 37**), PO Prusayev noted, "While blocking traffic so protestors could safely pass, bus began to make turn into protestors. Officer [PO Prusayev] did move to block traffic when protestors began to scream at officers, then immediately began to approach officers, moving into zone of safety and acting in aggressive manner causing officers to fear for life. It was a large group of over 20 people approaching two officers. Officer [PO Prusayev] did take out firearm in Sul position and order protestors to back up. Shield number was requested and given. Firearm holstered once backup arrived."

The EVENT (**BR 38**) documents that beginning at approximately 8:31 p.m., a crowd of orderly protestors was blocking traffic as it moved northbound on Flatbush Avenue. At approximately 8:41 p.m., additional unit were requested to the intersection of the Flatbush Avenue Extension and Myrtle Avenue. At approximately 8:49 p.m., a follow-up communication goes over the radio clarifying that it is not a "10-13" at the location and that the additional officers are only needed "for help with protestors." The protestors continue walking northbound with police after passing the intersection of the Flatbush Avenue Extension and Myrtle Avenue.

NYPD Training Materials from the Police Academy for Muzzle Discipline from PO Prusayev's initial training year (2014) (**BR 39**) stated that the Position Sul is a "gun safety" position that is used as an alternative to the Low ready or High Tac ready position in crowded or close quarter environments. The training further notes that in a close-up confrontation, it may present a tactical disadvantage. If an officer inadvertently gets too close to an assailant while in this position, the perpetrator can easily press the weapon against the MOS' chest causing it to be trapped and unable to be used. PO Sallusto received the same training (**BR 40**) in 2019.

The investigation determined that PO Prusayev, who was not wearing a facemask, and PO

Sallusto first observed protestors at the intersection of Flatbush Avenue and Fulton Street, at which time neither officer observed anything threatening in nature or general behavior. At the intersection of the Flatbush Avenue Extension and Myrtle Avenue, when the Hispanic male, who was slightly shorter than PO Sallusto, approached PO Prusayev and PO Sallusto, he pointed one hand at PO Prusayev and had his other hand obscured behind his back at waist area.

§ 87(2)(b) stated that the male and other people in the crowd were yelling at PO Prusayev to put on a facemask but were not making any threats to PO Prusayev or PO Sallusto. PO Prusayev heard someone say something about a facemask but could not recall what it was, and he and PO Sallusto also heard the Hispanic male yell to PO Prusayev, “I’m going to fuck you up.” However, the audio of this portion of the incident is not captured on any video footage.

As the Hispanic male approached, PO Sallusto first gave a thumbs up sign to the protestors and then waved at the male to keep moving northbound, which he did, coming within an arm’s reach of PO Prusayev and PO Sallusto. PO Prusayev drew his firearm and pointed it to the ground in the Sul position. The male then paused on his northbound path and having seen the firearm, other protestors began to gather around PO Prusayev and PO Sallusto, who continued to not draw her firearm. After a few seconds, with the arrival of additional units, PO Prusayev holstered his firearm.

Patrol Guide procedure 221-01 (**BR 41**) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In situation in which this is not safe and/or appropriate, MOS will use only the reasonable force necessary to gain control or custody of a subject. The use of deadly physical force against a person can only be used to protect MOS and/or public from imminent serious physical injury or death.

Drawing a firearm prematurely or unnecessarily limits a uniformed member’s options in controlling a situation and may result in an unwarranted or accidental discharge of the firearm. The decision to display or draw a firearm should be based on an articulable believe that the potential for serious physical injury is present.

In determining whether the use of force is reasonable, members of the service should consider the following: A. The nature and severity of the crime/circumstance. B. Actions taken by the subject. C. Duration of the action. D. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders. E. Whether the subject is actively resisting arrest. F. Whether the subject is attempting to evade arrest by flight. G. Number of subjects in comparison to the number of MOS. H. Size, age, and condition of the subject in comparison to the MOS. I. Subject’s violent history, if known. J. Presence of hostile crowd or agitators. K. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(g)

§ 87(2)(g)



**Allegation (B) Abuse of Authority: Police Officer Artem Prusayev threatened individuals with the use of force.**

**Allegation (C) Abuse of Authority: Police Officer Justine Sallusto threatened individuals with the use of force.**

**Allegation (D) Abuse of Authority: Police Officer Joshua Destasio threatened individuals with the use of force.**

**Allegation (E) Abuse of Authority: Police Officer Craig Schoelermann threatened individuals with the use of force.**

§ 87(2)(b) (BR 01 and BR 30) stated that after PO Prusayev removed his firearm from the holster, the protestors began to yell more loudly than before. After re-holstering his firearm, PO Prusayev took out his pepper spray and pointed it at the crowd. A few seconds later, PO Sallusto also took out her pepper spray. After a few more seconds, PO Prusayev put his pepper spray away, took out his collapsible baton (ASP), and whipped it open with a swift downward motion toward the ground. PO Sallusto then also opened her collapsible baton in the same manner. Within approximately 60 seconds, PO Destasio and PO Schoelermann also arrived at the location holding their batons. PO Prusayev may have told people to move back, but § 87(2)(b) could not hear. None of the protestors were close to any of the officers, and no one was making any threatening statements or actions toward the officers.

PO Prusayev (BR 31) stated that once he re-holstered his firearm, he realized that it would still take PO Destasio and PO Schoelermann a few seconds to reach the location where he and PO Sallusto were standing. The crowd of 20 to 30 protestors, that had been approximately four feet away, started to circle in around him and PO Sallusto more closely, so PO Prusayev decided to take out his pepper spray and point it at the crowd thinking that seeing it might compel them to move away and that, if they continued to advance and became violent, he could easily deploy it and allow other officers enough time to get to him and PO Sallusto. The protestors were still approximately four feet away when he took out and pointed pepper spray. The protestors continued to advance, forcing PO Prusayev and PO Sallusto to walk backward into traffic. PO Prusayev was not sure if PO Sallusto also took out her pepper spray.

After a few seconds, approximately eight officers, including PO Destasio and PO Schoelermann arrived at the location, so PO Prusayev put down his pepper spray and formed a line with PO Sallusto, PO Destasio, PO Schoelermann, and the other arriving officers. Despite the line of officers, the protestors kept advancing toward them, which caused the officers to have to back into the traffic behind them. Because of this, PO Prusayev decided to take out his collapsible baton as a precaution in case it became necessary to push the crowd back. PO Prusayev forcefully swung the collapsible baton down to the ground because the opening mechanism was friction operated and required a strong downward thrust to open. PO Prusayev's intent was not to threaten the people in the crowd with this movement; there was no other way to open the collapsible baton. PO Sallusto also opened her collapsible baton in the same manner.

Once he had opened his collapsible baton, a female sergeant from a different command told PO Prusayev and PO Sallusto that they should wait in their van, so they left the immediate location.

PO Sallusto's statement (BR 32) was generally consistent with that of PO Prusayev with the following exceptions noted. After PO Prusayev re-holstered his firearm and once other officers were in the general area, PO Sallusto felt that the protestors were at a safe distance, but she noticed that the group of protestors surrounding them had increased in size. The protestors were yelling loudly and gesturing with their fists. PO Sallusto decided to take out her pepper spray because she wanted to be prepared should anyone in the crowd start to advance toward her and PO Prusayev before the other officers made it to their exact location. PO Sallusto did not point her pepper spray at anyone in the crowd, and she could not recall if PO Prusayev ever took out his pepper spray and

pointed it at the crowd. When she saw the officers getting closer, PO Sallusto decided that she did not want to use the pepper spray and put it away.

PO Sallusto then decided to open her collapsible baton a few seconds after she saw PO Prusayev open his because she had received training in the Police Academy to use the baton to push back crowds in protest situations and she wanted to be prepared should the crowd of people move any closer. PO Sallusto also saw other officers with their batons out, but she was not sure who they were.

PO Destasio's statement (**BR 33**) was generally consistent with those of PO Prusayev and PO Sallusto with the following exceptions. When PO Destasio and PO Schoelermann were close enough to see what was going on, PO Prusayev was pointing his can of pepper spray at protestors. PO Sallusto was also holding her can of pepper spray pointed toward the ground. PO Destasio and PO Schoelermann stood next to PO Prusayev and PO Sallusto to form a line, and PO Destasio saw that the protestors were still moving forward toward them while chanting, "Move back!" PO Destasio explained that officers are taught to say this in trainings regarding riot and crowd control, and he interpreted their use of the phrase as threatening because they were using the NYPD's own crowd control tactics to try to overtake a police line. PO Destasio, per training in crowd and disorder control that he received in the Police Academy decided to open his baton and hold it at a 45-degree angle in front of his chest in case it became necessary to push back the advancing crowd of people. Because he was only equipped with a collapsible baton, PO Destasio swung the baton open in a downward motion. PO Destasio held the line with PO Schoelermann, PO Prusayev, and PO Sallusto while the crowd continued to advance within one arm's length.

PO Schoelermann's statement (**BR 34**) was generally consistent with those of PO Prusayev, PO Sallusto, and PO Destasio.

Cell phone footage from social media (**BR 26**) captures this portion of the incident. At 00:07 seconds, after PO Prusayev re-holsters his firearm, PO Prusayev immediately removes his pepper spray and points it at protestors as they slowly begin to approach his left side and from the front. At approximately the same time, PO Sallusto removes her pepper spray, but points it toward the ground. There is a bus stopped in the street behind PO Prusayev and PO Sallusto and traffic flowing in the lane next to the bus. PO Prusayev and PO Sallusto take steps back so that they are standing in front of the stopped bus. Protestors are yelling loudly but do not appear to take any further steps forward. At 00:27 seconds, PO Schoelermann runs from the side of the bus to where PO Prusayev and PO Sallusto are standing. As PO Schoelermann approaches, PO Prusayev and PO Sallusto take steps further back into the lanes of traffic toward their parked van. At 00:35 seconds, PO Schoelermann swings open his baton, followed by PO Prusayev and then PO Sallusto as the people in the crowd begin to chant, "Move back!"

Additional cell phone footage from social media (**BR 27**) captures this portion of the incident from another angle and is generally consistent with the aforementioned video. The footage begins with PO Prusayev re-holstering his firearm, removing his pepper spray, and then pointing it at the crowd. At 00:08 seconds, people from the crowd begin to move forward toward PO Prusayev and PO Sallusto. PO Prusayev yells for the crowd to move back as he and PO Sallusto take steps back toward moving traffic. People in the crowd are loudly screaming, "Rookie!" and, "You pulled your fucking gun out!" At 00:30 seconds people in the crowd begin chanting, "Move back!" as PO Prusayev and PO Sallusto take further steps back toward their parked van. At 00:33 seconds, PO Prusayev swings open his baton, followed by PO Sallusto at 00:38 seconds. At 00:42 seconds, the camera pans to the right and captures PO Schoelermann and PO Destasio standing next to PO Prusayev and PO Sallusto holding their batons in front of their chests. PO Prusayev repeatedly tells the people in the crowd to back up, which they do not do. At 00:54 seconds, an officer on the left of the frame waves at PO Prusayev, PO Sallusto, PO Schoelermann, and PO Destasio to fall back, and PO Prusayev and PO Sallusto walk back toward their van.

In PO Prusayev's body-worn camera footage (**BR 04 and BR 05**), beginning at 1:00 minutes, approximately 20 to 30 protestors stop in front of PO Prusayev and PO Sallusto, point at

PO Prusayev, and yell that he pulled his firearm on them. Protestors are filming with their cameras and walk closer to where PO Prusayev is standing. At 1:11 minutes, PO Prusayev tells the protestors to back up. At 1:19 minutes, PO Sallusto takes out her pepper spray and holds it in her hand pointed toward the ground. By 1:27 minutes, protestors who passed the incident return and start to form a circle around PO Prusayev and PO Sallusto. At 1:33 minutes, PO Schoelermann arrives and stand in a line to PO Prusayev's left. At 1:35 minutes, the crowd continues chanting, "Move back!" as PO Prusayev and PO Sallusto takes steps backward. At 1:37 minutes, PO Prusayev opens his baton. At 1:42 minutes, PO Sallusto opens her baton. At 1:56 minutes, a female sergeant approaches and gestures for PO Prusayev and PO Sallusto to back away from the area, and they walk back toward the van.

PO Sallusto's body-worn camera footage (**BR 06** and **BR 07**) is consistent with that of PO Prusayev.

The investigation determined that after PO Prusayev drew his firearm, protestors took notice and grew agitated, which manifested in them filming the incident, yelling loudly, surrounding PO Prusayev and PO Sallusto, and walking toward them as a group. Behind PO Prusayev and PO Sallusto there was a stopped bus as well as a line of moving traffic. PO Prusayev removed his pepper spray and pointed it at the protestors and PO Sallusto drew her pepper spray and pointed it at the ground, as the protestors in the crowd advanced forward toward them. Seeing the pepper spray, the protestors stopped advancing. When PO Schoelermann and PO Destasio arrived, PO Prusayev and PO Sallusto put down the pepper spray, at which point the protestors started to chant, "Move back!" and advanced again on the officers. PO Schoelermann, PO Prusayev, PO Sallusto, and PO Destasio, having taken steps further back toward traffic, then all took out their collapsible batons and held them in front of them should they need to push the protestors back. Additional officers arrived, and a female sergeant instructed PO Prusayev and PO Sallusto back to their van and PO Schoelermann and PO Destasio to fall back.

Patrol Guide procedure 221-01 (**BR 41**) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In determining whether the use of force is reasonable, members of the service should consider the following: A. The nature and severity of the crime/circumstance. B. Actions taken by the subject. C. Duration of the action. D. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders. E. Whether the subject is actively resisting arrest. F. Whether the subject is attempting to evade arrest by flight. G. Number of subjects in comparison to the number of MOS. H. Size, age, and condition of the subject in comparison to the MOS. I. Subject's violent history, if known. J. Presence of hostile crowd or agitators. K. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

Patrol Guide procedure 221-07 (**BR 42**) states that O.C. pepper spray may be used to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

**Allegation (F) Abuse of Authority: Police Officer Artem Prusayev threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) (BR 01 and BR 30) stated that after PO Prusayev and PO Sallusto went into their van, she crossed the street so she could film the officers with her cell phone, focusing first on PO Sallusto in the front passenger seat, who waved at her. PO Prusayev told § 87(2)(b) who was more than an arm's distance away from the van, on the sidewalk and not blocking any traffic, to back away from the van. § 87(2)(b) then crossed in front of the van to the front driver's seat, where PO Prusayev was sitting and, from approximately 10 feet away, tried to film PO Prusayev's face. PO Prusayev told § 87(2)(b) to back away from the van and then quickly and forcefully opened his door in such a manner that § 87(2)(b) thought that PO Prusayev meant to hit her with it.

PO Prusayev (BR 31) stated that he saw § 87(2)(b) approach the front passenger side of the van and was filming within less than an arm's length. There were no other protestors in the general area, although there were other officers present. PO Prusayev did not feel comfortable with anyone who was not an officer being so close to the van, so he told § 87(2)(b) to back up, which she did. § 87(2)(b) then crossed in front of the van to the front passenger side, where PO Prusayev was sitting. § 87(2)(b) stood less than an arm's length from the van door and was partially obscured from PO Prusayev's sight. PO Prusayev told § 87(2)(b) to back away from the van a second time, but she did not. PO Prusayev then opened his door and quickly stepped out because he could not see where she was and did not feel safe in the van with anyone standing so closely, especially after they did not comply with commands to back up. PO Prusayev did not open the door with the intention of hitting § 87(2)(b) and denied making any threatening gestures toward her.

PO Sallusto's statement (BR 32) was consistent with that of PO Prusayev.

PO Destasio (BR 33) and PO Schoelermann (BR 34) did not witness this portion of the incident.

PO Prusayev's (BR 04 and 05) and PO Sallusto's (BR 06 and 07) body-worn camera footage captures this portion of the incident. In PO Sallusto's body-worn camera footage, beginning at 3:43 minutes, § 87(2)(b) approaches the front passenger side of the van and is filming with her cell phone. PO Sallusto waves at her, and 3:52 minutes, PO Prusayev says, "Ma'am, back away from the vehicle. Back away from the vehicle." § 87(2)(b) takes two large steps back from the vehicle and continues filming. § 87(2)(b) then crosses in front of the van to the front driver's side and out of the frame.

In PO Prusayev's body-worn camera footage, beginning at 3:54 minutes, he tells § 87(2)(b) who is out of the frame, "Ma'am, back away from the vehicle. Back away from the vehicle." At 3:58 minutes, PO Prusayev tells her a third time, "Back away from the vehicle." At 4:07 minutes, PO Prusayev opens his front door and says, "I said back away from the vehicle." It is not clear where § 87(2)(b) is standing when he opens the door. PO Prusayev then sits back down in the car and closes the door.

It was undisputed that § 87(2)(b) was filming PO Sallusto and PO Prusayev while they were in their van and that, as this was occurring, a large crowd of nearby protestors were angry with PO Prusayev for drawing his firearm earlier. It was also undisputed that PO Prusayev told § 87(2)(b) multiple times to back away from the van.

Patrol Guide procedure 221-01 (BR 41) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody.

§ 87(2)(g)

§ 87(2)(g)

**Allegation (G) Discourtesy: Police Officer Artem Prusayev acted discourteously toward individuals.**

It was undisputed that during the course of the incident PO Prusayev was wearing two patches on his ballistic vest (**BR 43**). One of the patches reads, “Caution. Does not play well with others.” The other pictures the head of a Plague doctor in profile wearing an NYPD helmet and carrying a baton on its left shoulder. The patch reads, “POLICE City of New York 2020 Riots.” Clearer online images of the patches (**BR 44** and **BR 45**) are attached to the case file.

PO Prusayev (**BR 31**) explained that the “Caution. Does not play well with others” patch was a joke among friends and was in reference to the video game, Call of Duty, because he refused to play an online version of the game with them. PO Prusayev provided no explanation of why he was wearing the patch picturing the Plague doctor.

According to Patrol Guide procedure 200-02 (**BR 46**), the Department is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers are to maintain a higher standard of integrity than is generally expected of others, value human life, respect the dignity of each individual, and render services with courtesy and civility.

§ 87(2)(g)

**Allegation** § 87(4-b) § 87(2)(g)

**Civilian and Officer CCRB Histories**

- § 87(2)(b) has been party to one CCRB complaints and has been named as a victim in six allegations (**BR 51**).
  - § 87(2)(b)
- This is the first complaint to which § 87(2)(b) has been a party (**BR 52**).
- § 87(2)(b) has been party to three CCRB complaints and names as a victim in one allegation (**BR 53**).
  - § 87(2)(b)
- This is the first complaint to which § 87(2)(b) has been a party (**BR 54**).
- PO Prusayev has been a member of service for seven years and has been a subject in five CCRB complaints and 11 allegations, none of which have been substantiated.

§ 87(2)(g)

- PO Sallusto has been a member of service for two years, and this is the first CCRB complaint to which she has been a subject.
- PO Destasio has been a member of service for four years, and this is the first CCRB complaint to which he has been a subject.
- PO Schoelermann has been a member of the service for four years and has been a subject in two CCRB complaints and two allegations, none of which have been substantiated.

§ 87(2)(g)

**Mediation, Civil, and Criminal Histories**

- This case was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
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- § 87(2)(b) filed a Notice of Claim with the City of New York claiming injuries to her emotional well-being, as well as violations of her Constitutional, common law, and/or statutory rights and is seeking that compensation be determined by a jury. There is no 50H hearing scheduled (**BR XX**).

Squad: 10

Investigator: Maura R. Roche  
Signature

SI Maura R. Roche  
Print Title & Name

08/25/2021  
Date

Squad Leader: Eric Rigie IM Eric Rigie 8/26/2021  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date